

Nebraska Law Review

Volume 54 | Issue 1

Article 2

1975

Complaint Resolution in Nebraska: Citizens, Bureaucrats, and the Ombudsman

Alan J. Wyner

University of California, Santa Barbara

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Alan J. Wyner, *Complaint Resolution in Nebraska: Citizens, Bureaucrats, and the Ombudsman*, 54 Neb. L. Rev. 1 (1975)

Available at: <https://digitalcommons.unl.edu/nlr/vol54/iss1/2>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

By Alan J. Wyner*

Complaint Resolution in Nebraska: Citizens, Bureaucrats and The Ombudsman

I. INTRODUCTION

In both a constitutional and moral sense one fundamental tenet of American ideology is the right of citizens to bring complaints against their government and to petition for a redress of their grievances. Americans have used many different avenues in pursuit of complaint resolution. For instance, elected officials have always been viewed as complaint resolvers. Mayors, governors and presidents as well as councilmen, state legislators and members of Congress continue in this role today. This article discusses the creation and implementation of a new avenue for resolving citizen grievances. It focuses on the introduction of an ombudsman into Nebraska state government.¹

Starting in the early 19th century in Sweden, the ombudsman institution has spread—first slowly, and now more rapidly—throughout the world.² An ombudsman is an official selected by a legislature to investigate and make recommendations on complaints against administrative agencies which are brought to him by private citizens. He may also initiate investigations on his own motion. Appointed by the legislature for a fixed term and at a

* Assistant Professor of Political Science, University of California, Santa Barbara. This research was supported by a grant from the United States Office of Economic Opportunity, Grant #CG-9041. The data used herein originally appeared in the author's project report, *THE NEBRASKA OMBUDSMAN: INNOVATION IN STATE GOVERNMENT* (1973).

1. NEB. REV. STAT. §§ 81-8,240 *et seq.* (1971). Nebraska's ombudsman has also been analyzed in Frank, *The Nebraska Public Counsel—The Ombudsman*, 5 CUMBERLAND-SAMFORD L. REV. 30 (1974).
2. See Rowat, *The Spread of the Ombudsman Idea*, OMBUDSMAN FOR AMERICAN GOVERNMENT? 7 (Anderson ed. 1968). In the short time since Rowat wrote this chapter, many new jurisdictions have been added to the list. See K. WEEKS, OMBUDSMEN AROUND THE WORLD: A COMPARATIVE CHART (1973).

fixed salary, he can usually be removed only by an extraordinary legislative majority upon demonstration of adequate cause. To help achieve impartiality and independence, legislatures have made ombudsmen relatively free from direct, politically motivated reprisals.³ Anderson offers a concise summary of an ombudsman's nature when he says that "the essential characteristics of the ombudsman post require that the individual filling it be: (1) independent, (2) impartial, (3) expert in government, (4) universally accessible, and (5) empowered only to recommend and to publicize."⁴

Although, as noted earlier, many types of complaint receiving offices have existed for some time, there are now only four ombudsman offices in the United States which are patterned after the original Swedish version. Hawaii was the first American jurisdiction to establish an ombudsman who possesses most of the powers and prerogatives of the Swedish version.⁵ Shortly after Nebraska's ombudsman began operation in 1971, the Iowa legislature approved a bill creating a state ombudsman (called a Citizens Aide) and thereby gave statutory existence and independence to an executive ombudsman then working out of the governor's office.⁶ The only ombudsman in local government that falls within the same mold as the three state offices just mentioned is the joint city-county office in Seattle/King County, Washington.⁷

3. For a more elaborate discussion of defining characteristics, see OMBUDSMEN FOR AMERICAN GOVERNMENT?, *supra* note 2, especially chapters 2 and 5 and the model statute in the appendix. For common variations on the original version, see A. WYNER, EXECUTIVE OMBUDSMEN IN THE UNITED STATES (1973).

4. S. ANDERSON, OMBUDSMAN PAPERS: AMERICAN EXPERIENCE AND PROPOSALS 3-4 (1969).

5. HAWAII REV. STAT. §§ 96-1 *et seq.* (1968). Enabling legislation was passed in June, 1967, but it took almost two years of searching and legislative maneuvering until Herman Doi was appointed ombudsman in April, 1969. Doi has been so skillful that the other American ombudsmen looked to him as a model during their formative periods.

6. IOWA CODE ANN. §§ 601G.1 *et seq.* (Cum. Pamphlet 1974).

7. The Dayton, Ohio ombudsman bears many similarities to the classical version but it is not included here because it is not based on a statute but rather the voluntary acquiescence of the city, county and school board. See Goodstein, An Evaluation of the Dayton Ombudsman (Charles F. Kettering Foundation 1972). At the time this article was written the city of Detroit had recently approved a new charter which included a provision for an ombudsman.

In addition, Kansas and Minnesota have provided for ombudsmen in correctional institutions. See KAN. STAT. ANN. § 75-5231 (Supp. 1973); MINN. STAT. ANN. § 241.407 (Cum. Supp. 1974). A number of state and local governments provide for complaint-handling officers who do not fit the model of the Swedish ombudsman in all particulars. See Frank, *supra* note 1, at 31 n.10.

During the 1960s and in the first few years of this decade, discussion about the desirability of American adoption of the ombudsman institution was based on speculation, informed guesswork, or extremely limited empirical data. The principal proponents of the ombudsman argued:⁸

1. All modern bureaucratized societies, almost by definition, will be "plagued" by a citizenry which experiences a significant degree of frustration in its relations with public bureaucracies.
2. Any modern, bureaucratized society that adheres to a democratic creed has an obligation to seek resolution of citizens' complaints against public bureaucracies; these complaints can lead to frustration and in the extreme, alienation.
3. The most reliable institution for resolving citizens' complaints with a high degree of skill and public acceptance is the ombudsman.

Those who opposed or seriously questioned the need for an ombudsman in the United States based their objections on any one of several grounds:⁹

1. The United States is too big, geographically and in population, for the idea to work.
2. Two key components of our political system—federalism and separation of power—make the idea impractical. For example, an ombudsman would usurp traditional legislative and judicial functions.
3. The quality of service rendered by public bureaucracies is good, and an external complaint resolution office is unnecessary. Further, an ombudsman would simply become another bureaucratized office and not have much impact.
4. Establishing an ombudsman will divert attention from more "pressing" reforms.

8. See, e.g., OMBUDSMAN FOR AMERICAN GOVERNMENT?, *supra* note 2; W. GELLHORN, OMBUDSMEN AND OTHERS (1966); THE OMBUDSMAN: CITIZENS DEFENDER (D. Rowat, 2d ed. 1968).

9. See, e.g., LOWI, THE END OF LIBERALISM (1969); Schick, *Toward the Cybernetic State*, PUBLIC ADMINISTRATION IN A TIME OF TURBULENCE 214 (Woldo, ed. 1971); Capozzola, *An American Ombudsman: Problems and Prospects*, 21 W. POL. Q. 289 (1968); Rosenblum, *Controlling the Bureaucracy of the Antipoverty Program*, 31 LAW & CONTEMP. PROB. 187 (1966); Sandler, *The Ombudsman: Who is He?—Is He Needed?*, 17 VITAL ISSUES, No. 6 (1968); Zeidler, *An Ombudsman for Cities?*, 377 ANNALS AM. ACAD. 123 (1968).

Now that we have experience with a few American ombudsmen, empirical evidence can be marshalled to challenge or confirm these different contentions. This article is a description, analysis, and evaluation of the Nebraska state ombudsman. Section II discusses the politics surrounding approval and appointment of the first ombudsman. Section III examines the ombudsman's statutory powers and operating procedures. Section IV presents a statistical analysis of his caseload. The final section offers an evaluation of the first two years of the Nebraska ombudsman's activities and a commentary on the degree to which this office has dealt with the criticisms voiced about ombudsmen prior to their establishment in the United States. Although this article is about one particular ombudsman, the underlying topic concerns complaint resolution in a society with both democratic political traditions and a highly bureaucratized government. The ombudsman is one way a modern democracy can provide fair and speedy resolution of complaints against public bureaucracies. Its success or failure reflects upon the nature of the political system itself.

II. THE POLITICS OF ADOPTION AND APPOINTMENT

Near the end of the 1969 legislative session, freshman Senator Loran Schmit succeeded in persuading a bare majority of his colleagues to pass Legislative Bill 521 ("L.B. 521") establishing the Nebraska ombudsman.¹⁰ This section details the process through which Schmit maneuvered L.B. 521 into law and the subsequent appointment of the first ombudsman. The political battles attendant to adoption and appointment provide important clues to understanding and evaluating the subsequent performance of the Nebraska ombudsman.

A. Clearing the Legislative Hurdles

After advancing from the Committee on the Judiciary with a unanimous favorable recommendation in January 1969,¹¹ L.B. 521 was sent to the Unicameral for debate and consideration. In a state with a usually active corps of lobbyists in the state capitol, L.B. 521 failed to attract their attention and not one lobbyist spoke out publicly in support of or in opposition to the bill.¹² The bill passed without a vote to spare.¹³

10. NEB. REV. STAT. §§ 81-8,240 *et seq.* (1971). L.B. 521 was co-sponsored by Schmit and Senator Willard H. Waldo.

11. *Hearings on LB 521 Before the Judiciary Comm.*, 80th Neb. Leg. Sess., at 43 (1969).

12. *Id.* at 36-43.

13. Requiring an absolute majority of 25 of the 49 members, the final tally

During the floor debate, senators opposed to L.B. 521 focused their attack in four areas:¹⁴

1. The new office would be costly in terms of both the proposed salary of \$20,500 for the ombudsman and the total operating expenses.
2. An ombudsman was superfluous at best because legislators were already acting as ombudsmen for their constituents.
3. An ombudsman would interfere with the normal operating routines of administrative agencies and hamper their efficiency.
4. Nebraska should not be used as an experimental testing ground for a foreign idea, untried in the United States.

Proponents of L.B. 521, led by Senator Schmit, responded to these criticisms. The salary and operating expenses were deleted from the bill and instead the legislature's Executive Board—composed of legislative leaders—was instructed to set the salary, so that an appropriation bill could be introduced later.¹⁵ To the claim that legislators were already ombudsmen, proponents responded by calling such a statement “naive;” part-time legislators had neither the time nor expertise to guide citizens through the bureaucracy.¹⁶ Rather than worry about interference with agency operations, Senator Schmit suggested that his colleagues consider the plight of a citizen in the face of either staff mistakes or incompetence. Further, it was suggested that the ombudsman's *modus operandi* would emphasize persuasion and compromise rather than head-on conflict.¹⁷ Discomfort with uniqueness—the fourth objection—is difficult to fight because there are no substantive grounds upon which to base a counterattack. This objection leads the discussion away from the merits of the proposal and into an arena in which each legislator's attitude about risk-taking becomes primary.

was 25 voting in the affirmative, 15 voting in the negative, 7 not voting and 2 absent. Senators from the metropolitan areas of Lincoln and Omaha joined with two senators from smaller cities and nine rural senators to form the winning coalition in the non-partisan legislature. All but one of the Lincoln and Omaha senators who voted on L.B. 521 supported the legislation. The senators from small cities and rural areas were almost evenly divided between affirmative and negative positions. 1969 NEB. LEG. JRN. 3073-74 (July 22, 1969).

14. *Transcript of Debate on LB 521*, 80th Neb. Leg. Sess., 1520-28 (May 19, 1969).

15. *Id.* at 2678-82 (July 9, 1969).

16. *Id.* at 1525 (May 19, 1969).

17. *Id.* at 1526.

B. Appointing the First Ombudsman

The official Nebraska Legislative Journal contains this bland entry for May 5, 1971: "The Executive Board herewith submits the name of Murrell McNeil to the position of Ombudsman."¹⁸ In the subsequent vote, McNeil was unanimously approved as Nebraska's first ombudsman, although 11 senators did not vote on the nomination. To say that the vote was anticlimactic would be a gross understatement. So much uncertainty and controversy over the appointment plagued the almost two-year interval between passage of L.B. 521 and McNeil's nomination that establishment of the office became problematical. The final version of L.B. 521 gave the Executive Board responsibility for nominating an ombudsman and setting his salary. The Executive Board was required to send the nomination to the Unicameral, where a two-thirds vote was necessary for confirmation.¹⁹

Two powerful members of the Executive Board had voted against L.B. 521, and the Board did not seem in any hurry to make the nomination.²⁰ The question of finances was settled in May 1970, when the United States Office of Economic Opportunity ("OEO") agreed to underwrite almost totally the ombudsman's salary and office expenses. OEO offered a grant of \$70,530 for the first year's operation, with the understanding that the office would be eligible for a similar and final grant the following year.²¹ As with so many other activities of state governments, the carrot of federal money was dangled before the legislature's Executive Board. That the legislature finally implemented the ombudsman office must be attributed in great measure to this source of "free money."

After an extended search, the first attempt to nominate an ombudsman was aborted by a combination of politically motivated suspicion from the governor and a salary dispute between the Executive Board and the potential nominee. When the dust had settled on this attempt, the Executive Board turned to a man literally un-

18. 1971 NEB. LEG. JRNAL. 1647 (May 5, 1971).

19. NEB. REV. STAT. § 81-8,241 (1971).

20. Senator Leslie Stull, Vice President of the Executive Board, and Senator William H. Hasebroock, Speaker of the Legislature, were members of the Board who opposed the passage of L.B. 521. 1969 NEB. LEG. JRNAL. 3073-74 (July 22, 1969).

21. OEO's involvement with the Nebraska ombudsman began as a result of pure happenstance. While Governor Tiemann was attending a meeting in Washington, D.C., he heard a casual remark that OEO was interested in funding ombudsman demonstration projects. Remembering that Nebraska's ombudsman had not received an appropriation, Tiemann pursued this conversation and before long, OEO was talking to Senator Schmit and others about federal funding.

der its nose. After consultation with Senator Schmit, the nomination was offered to Murrell McNeil, who at that time was working on the staff of the Legislative Council.²² After a few days of hesitation and thought, McNeil accepted the nomination with the salary set at \$17,500.

The controversy over salary was about more than money. Salary denotes status and importance, and that was what motivated the controversy. To be effective, an ombudsman must have status and perceived importance, and in Nebraska the ombudsman's salary gives him both. His salary compares favorably with that paid such officials as the secretary of state, the state treasurer, the auditor of public accounts, and other similar executive officials. Since his appointment, the ombudsman's salary has been raised to account for inflation, but he maintains parity with executive officials such as those just named. His current salary is \$18,400.

C. Legislators as Complaint Handlers

The new ombudsman did not step into a vacuum in the field of complaint processing. Because of their relatively small number, one might expect Nebraska's forty-nine legislators to have high public visibility. If this assumption is true, then one might further expect state senators to be the recipients of many constituent complaints. Because of the ombudsman's close association with the legislature and the criticisms mentioned earlier about usurpation of legislative functions, legislative complaint handling practices were examined for 1972 and 1973.²³

22. McNeil had already completed two careers—one of long and one of short duration—when the legislature appointed him as ombudsman. McNeil retired as an Army Lieutenant Colonel in 1963 after twenty-two years in the service. His second career started in 1966 when Governor Tiemann appointed him state tax commissioner. Although he was not re-appointed to the position in 1970 by newly elected Governor Exon, during the four years of his tenure McNeil was a publicly visible state administrator. He became tax commissioner at the very time Nebraska first imposed a sales and income tax on its citizens. Through extensive media coverage and endless speaking at public gatherings, McNeil became a well-known official. And, of course, the nature of his job meant that he had close contact with legislators.

23. During June 1972 and June 1973, all Nebraska legislators were mailed a questionnaire designed to assess the nature of the contact they had with constituents. The two sets of questionnaires are not cumulative—although the same questions were asked both times—because there were eleven new senators in 1973. The response rate in 1972 was 71% (35) and in 1973 it was 69% (34). Not all legislators indicated applicable responses to each question. Therefore, some of the data reported here represent replies from less than 35 (in 1972) or 34 (1973) senators.

When the Nebraska legislature was in session, the average number of contacts per week that senators estimated receiving from citizens was 43 ($N=33$) in 1972 and 62 ($N=32$) in 1973; and when the legislature was not meeting, the average number per week dropped to 13 in 1972 and 11 in 1973.²⁴ Legislators were asked to indicate the nature of these contacts, presumably combining both in- and out-of-session perceptions. Legislators' perceptions about the nature of their contacts with the public changed from 1972 to 1973.²⁵ Of the changes, the decline in the percentage of complaints is of special interest. Nebraskans are either complaining less to legislators because they are voicing their complaints to other persons or perhaps they are complaining less to all potential complaint recipients.

When legislators were asked to identify the most common type of *complaints* received (out of the total amount of contacts), they did not name specific agencies against which citizens brought grievances.²⁶ Rather, they spoke in more general terms, and appeared to be grouping the complaints into categories. For instance, instead of specifying that he received complaints about abusive behavior by a particular official of a particular agency, the legislator would simply indicate "harassment by agency personnel."

Averaging their responses about complaints only, legislators in

24. The number of contacts per week varies enormously. The responses ranged from a low of 2 per week to a high of 150 per week for in-session contacts, and from a low of 1 to a high of 50 per week for out-of-session contacts.

25. Percentage of legislator's contacts with citizens that were:

	1972	1973
Opinions on Issues or Suggestions for Legislation	50%	67%
Requests for Legislation	31%	21%
Complaints about State Government	15%	9%
Other	4%	3%
	100% ($N=35$)	100% ($N=33$)

26. Legislators could indicate more than one kind of complaint. They are summarized and arrayed below:

	1972	1973
Taxes and/or the Cost of Government	30%	18%
Agency Regulations or Administration of Regulations, or Agency Personnel	27%	32%
Pending or Recently Enacted Legislation	22%	23%
Communication: Inability to Know Where to Go or to Whom to Speak About a Problem	11%	10%
Miscellaneous	10%	17%
	100% ($N=56$)	100% ($N=69$)

1972 reported that 34 per cent of the complaints received about state government were valid, while the figure rose to 43 per cent in 1973. The questionnaire suggested that a valid and justified complaint occurred when the state government made an error or when an individual had been treated improperly by an agency.

Looking ahead to subsequent analysis of the ombudsman's caseload, it is worth noting at this point that 52 per cent of the *legislators' complaint caseload* in 1972 and 41 per cent in 1973 was in areas that seldom are brought to the ombudsman's attention—namely, taxes and legislation. Although there is some overlap between the ombudsman's work and the legislators' citizen contact caseload, it appears that Nebraskans are using their legislators and their ombudsman as different kinds of complaint channels. This point, plus the fact that only a small percentage of the senators' public contact involves citizens' complaints, offers evidence to refute the criticisms of the ombudsman advanced during legislative consideration of L.B. 521—namely, that legislators are already serving as ombudsmen.

III. POWERS AND PROCEDURE OF THE NEBRASKA OMBUDSMAN

A. Statutory Authority

Before analyzing the performance of the Nebraska ombudsman, it is helpful to consider his statutory authority and methods of operation.²⁷ The Nebraska law calls the ombudsman a "Public Counsel," apparently because the legislature was concerned that citizens would be unfamiliar with the Scandinavian term.²⁸ Nevertheless, Nebraska's Public Counsel has recognized his title to be a misnomer and has uniformly referred to himself as the state's "ombudsman."²⁹ The remainder of this article will use the latter term because it is more indicative of the type of position created by L.B. 521.

The Nebraska law provides that the ombudsman "shall be a person well equipped to analyze the problems of law, administration, and public policy."³⁰ A person may not serve as ombudsman within two years after being in the legislature or while he is a candidate for or holds any other state office. The law further forbids the

27. For a comparison of the Nebraska statute with other ombudsmen laws, both enacted and proposed, see Frank, *supra* note 1, at 38-49.

28. *Hearings*, *supra* note 11, at 40 (Mr. Evans' testimony).

29. See, e.g., 1 NEB. OMBUDSMAN REP. 13 (1972): "The word [ombudsman] is new in our vocabulary, however, that fact must be overcome. An advantage of the word is that once it is known to the public, the communication net is established."

30. NEB. REV. STAT. § 81-8,242 (Reissue 1971).

ombudsman from being active in partisan affairs or engaging in any other paying occupation during his term.³¹ He is to be appointed by a two-thirds vote of the legislature from nominations submitted by the Legislative Council's Executive Board.³²

The ombudsman's jurisdiction extends to "administrative acts" of "administrative agencies." An "administrative act" includes "every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency."³³ The term "administrative agency" extends to any governmental unit or official acting or purporting to act for the State of Nebraska. The law expressly excepts from the ombudsman's purview courts, legislative employees, the governor and his staff, employees of political subdivisions and interstate instrumentalities, and federal agencies.³⁴

The ombudsman may investigate any administrative act of any administrative agency, either in response to a complaint or on his own motion.³⁵ When a complaint about an agency is received, he is directed to conduct a suitable investigation and make a report to both the complainant and agency involved, unless he determines the investigation to be unnecessary.³⁶ In addition, he may undertake an inquiry into a particular act or agency or into administrative procedures generally, if he believes such a study will enhance knowledge about or promote improvements in agency functioning.³⁷ In determining which matters to consider, the ombudsman is directed to "address himself particularly" to certain types of abuses.³⁸

31. *Id.*

32. *Id.* § 81-8,241. He may also be removed by a two-thirds vote of the legislature upon a determination that he has become "incapacitated or has been guilty of neglect of duty or misconduct." *Id.* § 81-8,243. The ombudsman is directed to appoint a "deputy public counsel," as well as other necessary staff. *Id.* § 81-8,242. In the event the ombudsman is removed, his deputy serves as acting ombudsman until a successor is appointed. *Id.* § 81-8,243.

33. *Id.* § 81-8,240(1).

34. *Id.* § 81-8,240(2).

35. *Id.* § 81-8,245(1).

36. *Id.* § 81-8,247.

37. *Id.* § 81-8,245(5).

38. *Id.* § 81-8,246. He is directed to focus on administrative acts that might be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's judgments;
- (3) Mistaken in law or arbitrary in ascertainties of fact;
- (4) Improper in motivation or based on irrelevant considerations;
- (5) Unclear or inadequately explained when reasons

In pursuit of his investigations, the ombudsman is given broad powers to request information from administrative agencies; to inspect and examine records and documents; to enter the premises within any agency's control; and to issue a subpoena, if necessary, to compel a witness to appear or an agency to produce documents. He also has broad discretion to shape his investigations and to determine the frequency and methods of reports.³⁹ Before announcing a conclusion critical of an agency or individual, he must consult with the agency or person involved.⁴⁰ If he believes the agency should consider a matter further or take other appropriate action, he may so advise the agency; but if the source of the problem is a statute "whose results are unfair or objectionable," he may recommend statutory change to the legislature.⁴¹

The Nebraska law is careful to delineate the relationship between the ombudsman and the courts. As noted earlier, the ombudsman's jurisdiction excludes the state courts.⁴² The law further provides that no proceeding, expression or opinion of the ombudsman is subject to judicial review, and the ombudsman and his staff cannot be called to testify in a judicial or administrative proceeding except where necessary to enforce the ombudsman law.⁴³ In the event his investigation uncovers evidence of criminal conduct by an official or employee, he is directed to turn the matter over to the appropriate authorities.⁴⁴ Finally, the law creates a criminal sanction for persons who willfully obstruct, hinder, mislead or attempt to mislead the ombudsman in the exercise of his functions.⁴⁵

B. Operation Procedures of the Ombudsman Office

Within the statutory framework, the ombudsman has articulated three goals to guide his office's operating procedures: (1) keep the office small, easily accessible, and relatively inexpensive; (2) develop an efficient office routine; and (3) acquaint Nebraskans with the office's potential.

should have been revealed; or
(6) Inefficiently performed.

39. *Id.* § 81-8,245(2)-(4).

40. *Id.* § 81-8,248. The ombudsman may publish his conclusions by transmitting them to the governor, the legislature, the press, or others who may be concerned. He is directed to include any explanatory statements by an administrative agency named in an opinion adverse to the agency. *Id.* § 81-8,250. In addition, he must file an annual report to the legislature. *Id.* § 81-8,251.

41. *Id.* § 81-8,249.

42. *Id.* § 81-8,240(1); see text accompanying note 34 *supra*.

43. *Id.* § 81-8,253.

44. *Id.* § 81-8,252.

45. *Id.* § 81-8,254. Interfering with the ombudsman is a misdemeanor punishable by a fine of not more than one thousand dollars.

1. Staff

Flying in the face of the traditional American pattern of large, complex bureaucratic structures, but entirely in keeping with the spirit and intent of ombudsman legislation, the Nebraska ombudsman has kept his office staff small.⁴⁶ In addition to himself, he employs one full-time administrative assistant, one part-time typist, and a lawyer who spends about one-third of his work week in the ombudsman's office. He handles almost all of the casework himself, relying upon the lawyer for legal advice or legal research. With few exceptions, every letter addressed to a citizen and most correspondence with agencies is actually dictated and signed by the ombudsman.⁴⁷

2. Office Routine

All organizations adopt a set of rules to guide daily behavior. Several operating rules adopted by the Nebraska ombudsman have had an impact on the office's character. For example, the office will accept anonymous complaints provided they are not directed against specific agency personnel.⁴⁸ But the office refuses to accept complaints lodged against individuals unless the complainant fully identifies himself. In such cases, the ombudsman will protect the complainant's identity if he desires and if it is possible. But to

46. During the 26-month period from May 1, 1971 to June 30, 1973, expenditures were \$87,261:

Staff salaries	\$67,094
Operating expenses	7,906
Supplies and materials	560
Travel expenses	1,971
Capital outlay	6,243
In-kind services provided by the state (office space & utilities)	3,487
	<hr/>
	\$87,261

Because salaries comprise such a large percentage of any budget, the ombudsman's personal attention to the caseload with the consequent small staff permits the office to operate on a modest budget.

47. There are clear opportunity costs attached to this style of thorough personal attention to the caseload. For instance, despite his active efforts at publicizing the office, a state as large as Nebraska is a challenge to anyone disseminating information about a new governmental service. The need for publicity is almost endless. Rather than spend as much time as he does on the casework, the ombudsman could have chosen to delegate some of that responsibility and spend even more time on publicity. Another cost of this style is the possibility that the quantity of work will dampen motivation to spend the time required by truly complicated cases.

48. As a matter of record, he has received only two anonymous complaints to date.

help preclude unfounded and malicious attacks on state employees, he insists that the complainant reveal his identity.

Although L.B. 521 can be read to require citizens to exhaust all their potential administrative remedies, the ombudsman never tells citizens to "come back later." Such an interpretation would be impractical and if strictly enforced would erode public support for the office. Under this strict interpretation, the ombudsman would ask a citizen to trace, in detail, all his attempts to resolve the issue. Many would not remember or understand all that had happened and would be frustrated in their attempt to secure the ombudsman's aid, because he would send them to an agency to guarantee exhaustion of all possible remedies. Further, one of the reasons that the ombudsman was established, and one of the reasons that many citizens use the office, is precisely to abate or avoid the buck-passing, "no, you're in the wrong office" routine that afflicts many governmental agencies.

3. *Publicity for the Office*

The ombudsman is extremely conscious of the need for disseminating information about the office. A mutually beneficial relationship has developed between the media and the ombudsman. He has been appropriately aggressive in seeking out the media and informing Nebraskans through it. As nearly as can be determined by reading Nebraska newspaper stories and editorials, the ombudsman enjoys the confidence of the media. For instance, the *Lincoln Star* editorialized that "The Nebraska Ombudsman program, as it looks now, was a wise experiment."⁴⁹ Newspapers support his office, and that support not only helps inform Nebraskans, but also has a positive effect on legislators.

An important test of the ombudsman's acceptance came when the original OEO grant was about to expire in 1973. The office's request for state funding was an important hurdle, which would provide a good indication about the ombudsman's acceptance as a regular and continuing part of state government. Refusal to support the ombudsman with state money could be taken as an indicator of failure. With neither debate nor dissent, the legislature unanimously approved the ombudsman budget request.⁵⁰ Comparing the narrow one-vote margin by which the office was established⁵¹ with the unanimous agreement to provide state money strongly suggests that the office has passed the first tests of a new institution and moved to a new level of support and opportunities.

49. *Lincoln, Star*, January 21, 1972, editorial page.

50. *Transcript of Debate on LB 259*, 83d Neb. Leg., 1st Sess., 1382-83 (April 19, 1973).

51. See note 13 *supra*.

IV. ANALYSIS OF THE OMBUDSMAN'S CASELOAD

The Nebraska ombudsman has been in operation for a sufficient period of time to draw some meaningful conclusions about the nature of his caseload and his manner of handling complaints. This section analyzes five aspects of his caseload: (1) the number and type of cases; (2) the elapsed time in resolving cases; (3) referrals from legislators; (4) the agencies which are the subject of complaints; and (5) cases brought by poor Nebraskans. A close look at these considerations casts light on the objections originally raised when the Nebraska ombudsman's office was created.⁵²

A. Number and Type of Cases

For the 26-month period of May 1971 through June 1973, the ombudsman recorded 1,526 cases.⁵³ As Table I indicates, cases may be categorized into two main types: inquiries and complaints. Fifty-nine per cent of the cases were complaints, and the remainder inquiries. Although a strict reading of the ombudsman legislation would suggest that only complaints ought to be within the office's jurisdiction, this is an unwarranted and impractical interpretation. The Nebraska ombudsman was created to assist citizens when they have problems with the state government; often these problems are articulated as a question in search of guidance about how to resolve the problem. Further, many questions are implied complaints. If a citizen asks, "Why didn't I get my tax refund last month?," he may be implying an unwarranted slowness on the part of the bureaucracy—that is, a complaint. For these reasons, the ombudsman has properly allowed his office to answer questions that citizens bring forward.

1. Case Categories

To understand the categorization of cases handled by the ombuds-

52. See notes 14-17 and accompanying text *supra*.

53. This includes only those cases for which records have been kept. Several hundred contacts with the office were not recorded because they were simple questions and requests, often involving nonjurisdictional matters, such as "Where do I get a city (state) map?"

Another important qualification is simple, but is often overlooked in presenting quantitative caseload data: caseload does not necessarily equal workload. The amount of time and intellectual effort demanded by different cases can vary enormously. Where one case may be satisfactorily completed in one morning with a few phone calls, another case may require many days of nearly constant attention. Hence, it is nonsensical to engage in any computations of average amount of time or average amount of money to complete a "typical" case; the range is too large to permit the calculation of a meaningful average figure.

Table 1
Category of Case, Nebraska Ombudsman,
May 1971 through June 1973

Complaint, Jurisdiction, Justified	13.1%	} 33.4%	(509)
Complaint, Jurisdiction, Partially Justified	4.9%		
Complaint, Jurisdiction, Unjustified	15.3%		
Complaint, No Jurisdiction, No Assistance Provided	4.4%	} 25.3%	(386)
Complaint, No Jurisdiction, Assistance Provided	20.9%		
Inquiry, Jurisdiction	29.0%	29.0%	(443)
Inquiry, No Jurisdiction, No Assistance Provided	1.4%	} 11.7%	(179)
Inquiry, No Jurisdiction, Assistance	10.3%		
Not Recorded	0.6%	0.6%	(9)
TOTAL		99.9%	(N=1526)

man, several interpretative comments are necessary. The ombudsman's jurisdiction is limited to administrative agencies of the state government.⁵⁴ A case, inquiry or complaint, is classified as "no jurisdiction" if the subject matter pertains to anything other than the functions of a state agency. The ombudsman usually provides some form of assistance for individuals presenting no jurisdiction complaints or inquiries. Often he will write a letter to the proper office or public official; in no jurisdiction cases that appear critical, he will often take whatever steps he can to see whether the problem can be alleviated informally. Those no jurisdiction cases in which he does no more than advise the citizen of the proper place to file a case are categorized as "no jurisdiction, no assistance provided." Yet, even here, the ombudsman is, of course, helping the citizen by providing proper direction.

Table 1 also indicates the ombudsman's judgment about the justifiability of the complaints that fall within his legislatively mandated jurisdiction. Looking only at jurisdictional complaints, the table shows that 40 per cent are justified, 15 per cent are partially justified, and 45 per cent are not justified in the ombudsman's judgment.

2. *Types of Complaints*

Because of our special interest in the types of complaints (as

⁵⁴ NEB. REV. STAT. §§ 81-8,240(1), 8,245 (Reissue 1971).

opposed to inquiries) brought to the ombudsman, Table 2 presents a classification of complaint type for both jurisdiction and no-jurisdiction complaints. These complaint types are based on the allegations of the citizen making the complaint. Most of the jurisdictional complaints allege an inadequacy in administrative procedure or the rendering of an inappropriate administrative opinion. Apparently, very few citizens are involved in a dispute with an agency over factual matters. A sizable number of no jurisdiction complaints allege the presence of either an inadequate or unfair law or they are complaints about a private legal matter.

Table 2

**Type of Complaint for Both Jurisdiction and No Jurisdiction
Complaints, May 1971 through June 1973†**

Complaint Type	Jurisdiction Complaints	No Jurisdiction Complaints	Total
Adequacy of administrative procedure	36.9%	17.4%	28.5%
Appropriateness of administrative opinion	24.8	22.3	23.8
Dispute about the facts of a case	1.7	0.0	1.0
Inadequate or unfair law	9.5	17.1	12.8
Misconduct of officials	7.4	10.9	8.9
Inadequate administrative communication	14.0	2.3	9.0
Consumer	2.1	8.3	4.8
Private dispute or legal matter	1.2	17.1	8.0
Other	2.3	4.7	3.3
	99.9%	100.1%	100.1%
TOTAL	(N=515)	(N=386)	(N=901)

† The classification scheme for type of complaints is adapted from one devised in Mall, *Colorado's Ombudsman Office*, 45 DENVER L.J. 132 (1968).

To clarify further different types of complaints citizens bring to the office, Table 3 provides an opportunity to assess the justification, if any, of complaints that fall into the eight complaint categories. Of most interest are the complaints over which the ombudsman has jurisdiction. In those cases outside his legal jurisdiction there are often serious limits placed on his ability to pursue a com-

Table 3
Complaint Type According to Justification, If Any,
of the Complaint, May 1971 through June 1973.

Complaint Type	Complaint Justified	Complaint Partially Justified	Complaint Unjustified	Complaint No Jurisdiction No Assistance	Complaint No Jurisdiction Assistance	Not Recorded	Total†
Adequacy of administrative procedure	43.5%	30.7%	33.8%	9.0%	19.1%	22.2%	28.5%
Appropriateness of administrative opinion	15.0	18.7	35.5	25.4	21.6	22.2	23.8
Dispute about the facts	1.5	0.0	2.6	0.0	0.0	0.0	1.0
Inadequate or unfair law	6.5	10.7	12.0	13.4	17.9	11.1	12.8
Misconduct of officials	7.0	8.0	7.7	10.4	11.0	0.0	8.9
Inadequate administrative communication	20.5	29.3	3.8	0.0	2.8	0.0	9.0
Consumer complaint	1.0	2.7	1.7	10.4	7.8	33.3	4.8
Private legal matter	2.5	0.0	0.0	25.4	15.4	11.1	8.0
Other	2.5	0.0	3.0	6.0	4.4	0.0	3.3
TOTAL	100 % (N=200)	100.1% (N=75)	100.1% (N=234)	100 % (N=67)	100 % (N=319)	99.9% (N=9)	100.1% (N=892)

† Excluding "Not recorded" cases.

plaint. Therefore, no jurisdiction complaints, while perhaps suggestive, are not accorded the same importance in this analysis.

Table 3 clearly shows that most complaints which are judged partially justified or completely justified allege an inadequacy in administrative procedure. In this instance, a procedure is defined as any operating rule or regulation, formal or informal, that administrative agencies employ in their decision making. The ombudsman's tasks in this kind of complaint are to assure himself and the citizen that the procedure is fair and that it is being applied in an equitable manner.⁵⁵ The largest number of *unjustified* complaints alleged an inappropriate administrative opinion. This is not surprising, because the ombudsman's job should not lead him to second-guess administrators who have followed proper law and procedure and who have arrived at a decision which, while reasonable, differs from that desired by the citizen. As long as the ombudsman is satisfied that reasonable discretion has been exercised—with due regard for mitigating circumstances—he must necessarily find for the agency. Such a finding, however, does not prevent him from offering advice, off the record, to the agency or to the citizen about ways to avoid further conflict.

3. *Official Misconduct*

While small in number—9 per cent of the total complaints—those complaints alleging some form of misconduct by public officials have a slightly higher than average level of justification. Of the thirty-eight complaints within the ombudsman's jurisdiction that alleged misconduct, 53 per cent were either totally justified or partially justified. Apparently, Nebraskans do not find many specific public bureaucrats about whom they feel obliged to complain, but when they do lodge such a complaint the odds are slightly better than even that the complaint is at least partially justified.

One further note about the no jurisdiction caseload that the ombudsman received: almost 38 per cent of the total no jurisdiction caseload involved Nebraska local government—counties, cities, and other subdivisions of government. And of those no jurisdiction cases about local government that were brought to the ombudsman, fully 73 per cent were complaints. Because these complaints are beyond his legal jurisdiction, the ombudsman does not make a judgment about the justification of the local government complaints.⁵⁶ There is no reason to suspect, however, that the rate of justified complaints for local government would be substantially less than

55. *Id.* §§ 81-8,246, 8,249.

56. *Id.* § 81-8,240(1).

the rate for state government; in fact, there are some indications that the justification rate is probably higher for local government. It is apparent from the data that many Nebraskans are unhappy with some aspects of their local government, and they are turning to the state for redress.

B. Elapsed Time from Start to Finish

Delay is an anathema to the ombudsman's office. Quick resolution of a case is a primary goal. A speedy resolution of most cases requires not only efficient operating procedures in the ombudsman's office, but the cooperation of the agencies with which the ombudsman must communicate. The Nebraska ombudsman not only works quickly but he has obviously received excellent cooperation from the bureaucracy.⁵⁷ Table 4 gives firm evidence of the speed with which Nebraskans can expect a final disposition.

Table 4
Number of Days Needed to Close Cases,
May 1971 through June 1973

Number of Days From Receipt to Close	Complaints		Inquiries		Total
	Juris- diction	No Juris- diction	Juris- diction	No Juris- diction	
1-3 days	39.7%	59.1%	67.0%	73.7%	56.6%
4-7 days	20.6	19.7	19.2	11.7	18.9
8-14 days	15.9	10.9	9.5	8.4	11.9
15-21 days	6.3	4.1	1.4	1.7	3.8
22-30 days	6.1	2.1	1.1	1.1	3.0
31-90 days	8.6	2.3	1.4	1.7	4.4
Over 90 days	1.6	0.8	0.2	0.6	0.6
Open or discontinued	1.2	1.0	0.2	1.1	0.8
TOTAL	100 % (N=509)	100 % (N=386)	100 % (N=443)	100 % (N=179)	100 % (N=1,517) †

† Excluding 9 "Not recorded" cases.

Two characteristics in the data of Table 4 deserve mention. During the second year of operation, the percentage of cases com-

57. The quick turnaround time on cases may mean several other things. For instance if the ombudsman is presenting only easily-handled requests to the agencies, then they can give him quick responses. Or a fast turnaround time may indicate that he does not often disagree with an agency's explanation for its handling of a case; disagreement usually means further communication with the agency and, therefore, a loss of time.

pleted in less than three days increased from 52.5 per cent to 56.6 per cent. This slight increase is evidence of further experience; providing the workload and staff remain as they are now, it is difficult to see how the percentage of cases closed so quickly can be increased much more. The cases which take the longest to complete are the justified complaints: only 29 per cent of them are completed in less than three days. Justified complaints are often very complicated cases, and may require extensive communication between the agency, ombudsman, and aggrieved citizen. Rapid handling of casework does not necessarily demonstrate the ombudsman's effectiveness, but it gives good evidence that he is meeting one important goal of his office—providing quick service to citizens with no more delay than is absolutely necessary.

When L.B. 521 was debated on the floor of the legislature, one objection to the ombudsman legislation suggested that the ombudsman would interfere with the "normal" activities of the administrative agencies.⁵⁸ While far from proving this objection's falsity, the speed with which agencies respond to requests for information suggests that at least agencies are not attempting to hinder the ombudsman by delaying their responses.

C. Referrals from Legislators

One gauge of the ombudsman's acceptance by the legislature is the large number of cases that senators have either presented directly or through referral of citizens to the ombudsman.⁵⁹ Several senators have taken advantage of comments made during committee hearings and floor debate on L.B. 521 which suggested that the ombudsman could help legislators do research on policy matters. Although as a practical matter, it is difficult for the ombudsman to refuse such requests, this kind of work was not envisioned by L.B. 521. The high percentage of his caseload that comes from legislative referral shows that the ombudsman is not seen as a threat to legislative-constituent relations. On the contrary, legislators seem to have learned that he can be helpful in dealing with constituents.⁶⁰ But the large number of legislative referrals, and the in-

58. See note 14 and accompanying text *supra*.

59. Of the ombudsman's entire twenty-six month caseload, 26% (397) came to his attention directly from or referred by a senator. (During the second year of operation, the percentage of legislative referrals climbed to 33%.) During the fiscal year 1971-1972, 37 senators used his office at least once and during the fiscal year 1972-1973, the number rose to 43 of the 49 senators. These figures do not include policy research requests from the senators.

60. The number of legislative referrals exceeded similar referrals received by the Iowa or Hawaii state ombudsman. Several reasons account for

crease from 21 per cent of his caseload in 1971-1972 to 33 per cent of his caseload in 1972-1973, provide some grounds for consideration of the ombudsman's legislative relationships. Does he work too closely with the senators? Is a disproportionate share of his caseload coming from legislators?

The dangers of a high legislative referral caseload are two-fold. First, as the percentage of referred cases increases, then necessarily the proportion of citizen originated cases must decline. The ombudsman was intended to be directly available to private citizens. For this direct access to be a reality, the ombudsman must continually publicize his office and encourage individuals to voice their complaints directly to him. If the public "learns" during the ombudsman's formative years that it is helpful to speak with their senator first, then the fundamental character of the office would be changed.⁶¹

The second problem posed by extensive legislative referrals is the possibility that these cases will be treated preferentially. As illustrated above, the ombudsman processes all his cases quickly, so legislative referrals are not getting unusually fast handling. It does not appear that he has treated legislators' cases differently. With only a few exceptions, the caseload resulting from senatorial referral is no different in substance or number of justifiable complaints than the caseload coming directly from private citizens. When necessary, he has not hesitated to tell a senator that one of his constituents' complaints is not justified.

Ultimately, the ombudsman is responsible to the legislature. By encouraging senators to use his office, he has been able to earn their approval while at the same time maintaining the degree of independence required by the ombudsman concept. An ombudsman is independent if he can say "no" to legislative and executive offi-

the legislative referrals. First, and perhaps most importantly, is Murrell McNeil's reputation and personal relationships with the senators. Throughout Nebraska state government, but especially in the legislature, McNeil is widely respected as a man of unquestioned ability and integrity. What this means for legislators is simple: McNeil can be trusted to keep confidences and not to become involved in the legislature's internal power struggles.

Confidence in the ombudsman works with two other factors to increase his legislative referrals. One is physical proximity. His office is in the capitol building, and, in fact, is located adjacent to senatorial offices. Finally, the Nebraska legislature does not provide much in the way of staff or secretarial support for itself. The lack of personal staff encourages senators to refer constituents.

61. The British Parliamentary Commissioner for Administration receives complaints only from legislators. See Gwyn, *The British PCA: Ombudsman or Ombudsmouse?*, 35 J. POLITICS 45 (1973).

cials, as well as to citizens, when his judgment tells him it is required.

D. Agencies Involved in Cases

Examining the extent to which the caseload involves each state agency indicates the subject matter of his caseload as well. State government is organized along functional lines, *e.g.*, the Roads Department is responsible for state roads and the Department of Revenue collects taxes. It is therefore not surprising that those Nebraska agencies with the highest number of employees, and concurrently the greatest daily contact with the public, also are the subject of the greatest proportion of the ombudsman's caseload. Eight departments were involved in 51 per cent of the 952 cases that fell within the ombudsman's jurisdiction: Education, Health, Labor, Motor Vehicles, Public Institutions, Public Welfare, Revenue, and Roads. The remainder of the jurisdictional caseload was divided between boards, commissions, minor state offices, and the university. For the eight departments, the percentage of either partially or totally justified complaints is virtually identical with the partially or totally justified complaints for the entire caseload. Although they are larger, these eight departments fare no worse than the smaller state agencies.⁶²

E. Cases from the Nebraska Poor

The ombudsman has sought to identify all cases in which the poor were requesting service. Believing it inappropriate to ask citizens their income and assets, the office has relied upon a less offensive but less accurate guide to identify the poor. All clientele who are on some form of public assistance or who are eligible for welfare are classified as poor. This scheme probably underestimates the number of poor who use the office, but without further prying into individuals' financial records, it must suffice. Using the criteria

62. As a result of his previous service as tax commissioner, Murrell McNeil has many acquaintances at the top of administrative agencies. Apparently he felt comfortable going to the upper hierarchical levels of agencies, because in 47% of the 579 cases where data are available, the ombudsman contacted the head of an agency, a personal assistant to the head or the number-two man in the agency. In 23% of the cases, he discussed the case with middle-level management in an agency, *e.g.*, a bureau chief, and in 30% of the cases, a staff member at a lower level (often an operational job) was contacted. The large number of times that the ombudsman went directly to the top is unusual in light of other ombudsmen's experience, but the circumstances of McNeil's background made this a likely route for him to pursue.

just mentioned, the ombudsman served 153 poor citizens, which is 10 per cent of his total caseload. According to the United States Bureau of the Census, 13.1 per cent of all Nebraskans have an income less than the poverty level.⁶³

Tables 5 and 6 compare the type of cases and complaints brought by the poor and non-poor. The poor bring a higher percentage of complaints to the office, as opposed to inquiries, and they have a higher percentage of their complaints judged unjustified. There is an important explanation for the higher rate of unjustified complaints. The agency most frequently involved in cases from the poor is the Department of Public Welfare. Most of the unjustified complaints are about welfare payments, rules, and procedures. State law vests enormous discretion with county welfare agencies and the ombudsman's jurisdiction does not extend to these county welfare agencies. His jurisdiction is limited to those few instances where the Department of Public Welfare has rules and procedures governing local welfare administration. Most of the welfare complaints discussed with state welfare personnel are unjustified in the

Table 5
Type of Case for Poor and Non-Poor Citizens
Using Ombudsman's Office,
May 1971 through June 1973

Type of Case	Economic Class		Total
	Poor	Not Poor	
Complaint, Jurisdiction, Justified	12.4%	13.2%	13.1%
Complaint, Jurisdiction, Partially Justified	4.5	5.0	4.9
Complaint, Jurisdiction, Unjustified	26.1	14.1	15.3
Complaint, No Jurisdiction, No Assistance	3.3	4.5	4.4
Complaint, No Jurisdiction, Assistance	22.2	20.8	20.9
Inquiry, Jurisdiction	20.3	30.0	29.0
Inquiry, No Jurisdiction, No Assistance	1.3	1.4	1.4
Inquiry, No Jurisdiction, Assistance	9.2	10.4	10.3
Not Recorded	0.6	0.6	0.6
TOTAL	100 % (N=153)	100 % (N=1,373)	99.9% (N=1,526)

63. U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, CENSUS OF POPULATION: 1970, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS: NEBRASKA, at 29-196 (1972).

sense that no violation of law or procedure has been perpetrated. Instead, the complainant's ire has been aroused by the discretionary action of a local welfare official—something neither the state agency nor the ombudsman can affect. These complaints are considered within his jurisdiction for our coding purposes because of the potential involvement by the state agency, but the line between an unjustified and no-jurisdiction complaint is not easily drawn in such cases.

Table 6

**Type of Complaint for Jurisdiction and No Jurisdiction Complaints
From Poor and Non-Poor Citizens,
May 1971 through June 1973.**

Complaint Type	Economic Class		Total
	Poor	Not Poor	
Adequacy of administrative procedure	29.2%	28.4%	28.5%
Appropriateness of administrative opinion	32.1	22.6	23.8
Dispute about the facts	1.9	0.9	1.0
Inadequate or unfair laws	9.4	13.2	12.8
Misconduct of officials	9.4	8.8	8.9
Inadequate administrative communication	6.6	9.3	9.0
Consumer complaint	0.0	5.5	4.9
Private legal matter	7.5	8.1	8.0
Other	3.8	3.1	3.2
TOTAL	99.9% (N=106)	99.9% (N=795)	100.1% (N=901)

Table 5 shows a distinct similarity between the types of complaints brought by the poor and non-poor and the time required to close both poor and non-poor cases. With the exception of the Department of Public Welfare, the poor bring cases to the ombudsman concerning other state agencies in roughly the same proportion as those from the non-poor. More than welfare troubles the poor.

V. CONCLUSION: RESPONSE TO THE CRITICISMS

As an ombudsman seeks improvement in the administration of laws, he addresses three problems of bureaucracy—equity, responsiveness, and efficiency.⁶⁴ Equity refers to the need for like cases to be treated alike. Responsiveness appeals to the contrary need for comparison, exceptions and awareness of mitigating circumstances as a part of administrative decisionmaking. The efficiency

64. Wilson, *The Bureaucracy Problem*, 6 PUBLIC INTEREST 3-9 (1967). Wilson also identifies two other problems of bureaucracy: accountability and fiscal integrity.

problem concerns the need of "maximizing output for a given expenditure, or minimizing expenditures for a given output."⁶⁵ Finding the proper blend of these three values—equity, responsiveness, and efficiency—constitutes the basic responsibility of an ombudsman.⁶⁶ This is not an easy task, nor is it easy for an observer to measure success and failure.

One way to judge the Nebraska ombudsman's performance is to refer to criticisms of the ombudsman idea. Several criticisms were mentioned earlier.⁶⁷ To the extent that these criticisms are inappropriate there is evidence that the ombudsman is effective. But evidence of a more positive nature is also available.

To say that ombudsmen will not work in the United States because the country is too big is a naive criticism, envisioning an ombudsman for the federal government and overlooking the important role played by state and local governments. The geographic and population size of Nebraska, and most states, is similar to that of other countries where the ombudsman has been successfully introduced. Size can present very serious logistical problems for an ombudsman but they are not insurmountable in most political jurisdictions in the United States.

It is also argued that a federal system with responsibilities and functions overlapping different levels of government makes it impractical to establish an ombudsman at any one level. Yet this criticism ignores the relatively high degree of operational autonomy enjoyed by state and local government in a multitude of areas. Nebraska's ombudsman has been able to "forget" the federal government in the vast majority of cases he has handled. Any problems created because of a lack of jurisdiction over local governments are amenable to correction by the state legislature if it so chooses. Some confusion and even friction has occurred at the edges of the jurisdictional boundaries, but they have not hampered his operations.

Criticisms about the difficulties for ombudsmen due to separation of legislative, executive and judicial powers, point to some potentially serious problems. One such problem has been eliminated by removing the judiciary from the ombudsman's scrutiny and denying the ombudsman the ability to prosecute cases of suspected

65. *Id.* at 4-5.

66. This article has cited instances where the ombudsman has contributed to greater equity and responsiveness by the state bureaucracy. The cumulative effect of these efforts in individual cases is to increase the overall efficiency of the bureaucracy. It should be further noted that in certain cases the result of complaint resolution is to directly increase the efficiency of specific agencies.

67. See note 9 *supra*.

illegal actions.⁶⁸ Nebraska's ombudsman, and all American ombudsmen, may not interfere in the judicial process and must turn over evidence of illegal activity to appropriate prosecutors.

Because the ombudsman is an officer of the legislature it has been assumed that a constitutionally separate executive branch would fight his examinations of its activity. This has not happened to any degree in Nebraska for at least two reasons. First, it is to the governor's advantage to have executive departments cooperate with the ombudsman. Second, American legislatures have always exercised legislative review of executive actions and the ombudsman may be regarded as a new type of review.

To argue that the quality of service rendered by public bureaucracies is good and therefore an ombudsman is not necessary is to take a firm stance on a very slippery surface. "Quality" is almost entirely subjective. Wherever an ombudsman has been established, including Nebraska, the number of aggrieved citizens who come forward suggests that government in these jurisdictions has not been universally satisfactory.

The last major criticism of ombudsmen is that it would displace concern with more pressing problems and create an impression that all was well.⁶⁹ This reasoning was thought to be especially true for the poor. What this argument seems to ignore are the everyday realities facing the poor. While social reformers continue to clamor for basic reforms, the simple fact is that the poor must attempt to cope with their present environment. What is a "little" problem? Is it a missing welfare check, non-enforcement of housing codes, lack of a Department of Motor Vehicle licensing office in poor neighborhoods, or tax forms not printed in Spanish? These are the kinds of problems an ombudsman can address. Although resolving these will do little, if anything, toward basic social reforms, the plight of aggrieved poor citizens may be eased. Responding to complaints about current procedures and rules does not necessarily interfere with attention to the larger issues.

Many of the criticisms leveled against ombudsmen were made before any had been established in the United States. Most of the major criticisms, or at least their basic thrust, were off the mark. Experience in Nebraska has shown that an ombudsman can function well in an American political environment. No ombudsman will ever completely solve the "bureaucracy problem", but he can make progress toward diminishing the deleterious effects of bureaucracy.

68. See notes 42-45 and accompanying text *supra*.

69. For a good discussion of this assertion, see Moore, *Ombudsman and the Ghetto*, 1 CONN. L. REV. 244 (1968).